

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE:	:	X
	:	
RANDALL'S ISLAND FAMILY GOLF	:	Chapter 11
CENTERS, INC., et al.	:	Case Nos. 00-41065 (SMB)
DEBTORS	:	through 00-41196 (SMB)
	:	X

**OBJECTION OF LANDLORD DON MCGUIRT TO DEBTORS'  
MOTION FOR EXTENSION OF TIME TO ASSUME OR REJECT LEASES**

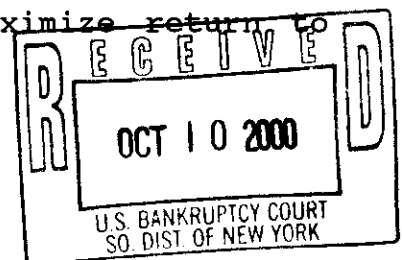
TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The undersigned Don McGuirt ("McGuirt") is a landlord of Family Golf Center Houston, Eaglequest. McGuirt is one of three individual owners who act as tenants in common. As a property owner and landlord, McGuirt, acting pro se, files this objection to the Debtors' motion for further extension of time to assume or reject leases.

1. McGuirt agrees that this Court has jurisdiction over these matters and that the Debtors' motion constitutes a core proceeding pursuant to 28 U.S.C. Sec. 157(b)(2).

2. Previously, Debtors filed for an extension of time to assume or reject leases, asking the Court to extend such time until ultimate Plan Confirmation. On July 27, 2000, this Court properly denied such open-ended extension of time and allowed the Debtors until October 9, 2000, to assume or reject.

3. Rather than evaluating the multiple business locations for essential profitability to assume or reject, the Debtors have sought to sell numerous unprofitable locations to maximize the return in this rejection or liquidation process. This landlord does not fault the Debtors for seeking to maximize return to



creditors, however, Debtors should not be permitted to do so at the expense of the lease landlords. The inequitable detriment to the landlord is particularly significant in the instant case of Site No. TX12.

4. The lease of the driving range located at 3601 Wilcrest, Houston, Texas 77042, is a "triple net" lease. This requires that the Debtor/tenant pay all insurance, maintenance and taxes. The lease was entered into May 16, 1997 and taxes have escalated during the term of the lease. Taxes for the year 2000 are due and payable in an annual sum in Houston, Texas. The lease rent for this property is \$240,000.00 per year. The taxes now comprise an additional sum of more than one quarter of the base rent. School taxes for year 2000 have been determined to be \$32,541.00. County and City taxes have not been finally determined, but will be approximately \$30,760.00. All of these taxes will be due and payable by the Debtor/tenant prior to the end of December, 2000. Property owners and tenants in Texas are allowed to pay their taxes at any time prior to January 31 of the succeeding year without penalty. McGuirt anticipates that the Debtor will delay payment of the property tax until the decision is made to reject the lease.

5. The Debtors' motion seeks to extend time for acceptance/rejection to January 8, 2001. The business operations at this property have been unprofitable for the Debtor for many months. McGuirt anticipates that the lease ultimately will be rejected. Should this Court grant the Debtors' motion, this landlord fully expects that the tenant will delay payment of taxes and decision to reject until January, 2001. Should Debtor then reject the lease,

Debtor will have delayed this landlord's right and opportunity for recovery of the property until the end of the year 2000. Further, Debtor will have postponed the payment of property taxes which constitute more than one fifth of the total annual rental expense in this "triple net" lease until the point of rejection. Should the Debtor fail or refuse to pay the property tax on lease rejection, this landlord will be without remedy for recovery.

6. McGuirt is aware that, as a post-petition landlord, he would be entitled to file a claim for any unpaid tax as a post-petition administrative claim. The availability of an administrative expense claim will be of no value unless the Debtors ultimately confirm and complete a successful plan. It has been argued that a landlord in a rejected lease is entitled to immediate payment of all post-petition rents upon lease rejection. See In re: Nutri/System of Florida, 178 B.R. 645 (E.D. Pa. 1995). However, a landlord will have no right or priority superior to any Chapter 7 administrative expense event of conversion. As of this date, no plan has been prepared, presented, proposed, or even suggested. Should the Debtors determine to liquidate some but not all, of the properties, it is possible that the Debtors will convert those corporations with rejected leases to Chapter 7 Bankruptcy, leaving the rejected landlords with uncollectible administrative expense rent.

7. This landlord in particular would be denied adequate protection by extension of time to January 8, 2001 because the Debtors can give no adequate assurance of payment of the property tax. This landlord would withdraw his objection if the Court would

include in its final order on the motion that Debtors must satisfy all property tax expenses prior to October 31, as a condition of obtaining the extension of time.

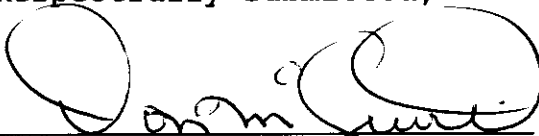
8. The court must consider a number of factors in determining whether to extend time to assume or reject leases. South Street Seaport Ltd. Partnership v. Burger Boys, Inc., 94 F. 3rd 755, 761 (2nd Cir. 1996). Factors to be considered include: (1) whether the property is the principal asset of the Debtor; (2) the potential for noncompensable prejudice to the landlord; (3) whether the Debtor/tenant is paying all rents due; (4) whether the Debtor has had opportunity to formulate a plan. In the present case, the Debtor has been paying rents as they become due, but in the next few weeks a major portion of the total rents will become due and landlord has a reasonable concern that the Debtor may default in this payment. The property is not a major asset. Indeed, the Debtor has already determined to abandon this site. The purchaser of leases, KLAK, Inc., has refused to accept this property as part of its purchase of leases. Whereas the Debtor has no genuine intent to continue this site operation, whether Debtors have had sufficient time to formulate a Chapter 11 Plan is not relative in this specific determination.

WHEREFORE, Don McGuirt, one of the landlords involved in the Debtors' pending motion, requests that this Court deny the Debtors' motion for further extension of time to accept or reject lease contracts. In the alternative, McGuirt prays that this Court deny the extension of time with respect to the specific lease contract listed in Debtors' motion as Site TX12. Should the Court determine

to grant the Debtors' motion, including this specific lease, this landlord prays that, as a condition of such extension of time, Debtors be ordered to pay all outstanding property taxes for the year 2000 prior to October 31, 2000. Don McGuirt, Respondent herein, further prays for such additional relief as may be just.

Respectfully submitted,

by:

A handwritten signature in black ink, appearing to read "Don McGuirt", written over a horizontal line.

Don McGuirt, pro se  
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**CERTIFICATE OF SERVICE**

I, Christian M. Sternat, hereby certify that a true and correct copy of the above and foregoing **OBJECTION OF LANDLORD DON MCGUIRT TO DEBTORS' MOTION FOR EXTENSION OF TIME TO ASSUME OR REJECT LEASES**, was sent by overnight express mail and by electronic mail, on this the 6th day of October, 2000 to the following:

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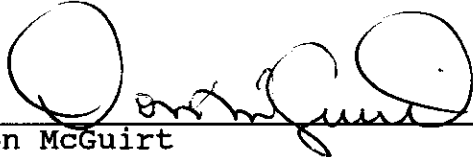
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